

## **DEX A**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

- - - - -x

EDWARD L. GILMORE, :  
Plaintiff, :  
v. : Civil Action No.  
ERIC HOLDER, in his official : 1:13-cv-789  
capacity as Attorney General :  
of the United States, :  
Defendant. :

- - - - -x

CONFIDENTIAL ATTORNEYS' EYES ONLY PORTIONS REDACTED

Deposition of PAMELA HORVATH  
Arlington, Virginia  
Thursday, April 3, 2014  
2:24 p.m.

Job No.: 56160  
Pages: 1 - 86  
Reported by: Lee Bursten, RMR, CRR

DEPOSITION OF PAMELA HORVATH  
CONDUCTED ON THURSDAY, APRIL 3, 2014

43

1 and building coalitions.

2 Q In order to meet those competencies, did an  
3 individual need to have a particular job description?

4 A Not that I know of.

5 Q Are all four competencies rated equally?

6 A Yes.

7 Q Did the Administrator ever instruct you to  
8 rate any competency differently?

9 A No.

10 Q Did the Administrator ever express to you a  
11 preference for a competency?

12 A No.

13 Q Did you provide the Administrator any  
14 information other than the executive summaries and  
15 the open season lists?

16 A No.

17 Q Did Administrator Tandy ever request from  
18 you lists other than the open season list?

19 A No.

20 Q Why don't we walk through a job opening in  
21 the SES.

22 A Okay.

DEPOSITION OF PAMELA HORVATH  
CONDUCTED ON THURSDAY, APRIL 3, 2014

44

1 Q So a position becomes available in the SES.

2 What do you do?

3 A Now, we're talking just 1811 positions,  
4 correct?

5 Q That's correct.

6 A I do nothing until the Administrator tells  
7 me who she's selecting for the position. The only  
8 difference is we have positions that are regional  
9 directors that are overseas. And we do announce  
10 those separately because not everybody wants to go  
11 Afghanistan.

12 Q So regardless of domestic geography --

13 A Just domestically?

14 Q Just domestic, you don't announce those?

15 A No.

16 Q So when a job becomes available, the  
17 Administrator would look to the existing open season  
18 list that you had compiled for her most recently?

19 A Yes.

20 Q As well as the executive summaries?

21 A Yes.

22 Q And no further information was required of

DEPOSITION OF PAMELA HORVATH  
CONDUCTED ON THURSDAY, APRIL 3, 2014

49

1           A       Then repeat, if you don't mind.

2           Q       Sure. So jobs aren't posted for SES. So  
3       were there any other ways for people to know an SES  
4       position was available?

5           A       I -- probably word of mouth. I don't know.

6           Q       So you never posted any position for SES  
7       other than the international?

8           A       Foreign, right. And the non-1811.

9           Q       So an SES position is available, an open  
10      season takes place, and you've merged your lists.  
11      What do you do now?

12          A       I prepare the lists, along with the  
13      executive summary, and I take it up to the  
14      Administrator. I also notify the applicant of what  
15      their score is and what list they're on.

16          Q       How does that process work?

17          A       Email.

18          Q       Has it always been the case?

19          A       We used to do a letter.

20          Q       When did it change?

21          A       2008.

22          Q       Do you simply hand the list to

DEPOSITION OF PAMELA HORVATH  
CONDUCTED ON THURSDAY, APRIL 3, 2014


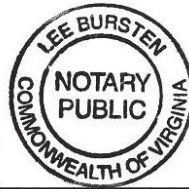
84

CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

I, Lee Bursten, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my direction; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 15th day of April, 2014.

My commission expires September 30, 2017.

LEE BURSTEN

NOTARY PUBLIC IN AND FOR

THE COMMONWEALTH OF VIRGINIA

Notary Registration Number 7255135

## **DEX B**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

- - - - -x

EDWARD L. GILMORE,	:	
Plaintiff,	:	
v.	:	Civil Action No.
ERIC HOLDER, in his official	:	1:13-cv-789
capacity as Attorney General	:	
of the United States,	:	
Defendant.	:	

- - - - -x

CONFIDENTIAL ATTORNEYS' EYES ONLY PORTIONS REDACTED

Deposition of MICHELE M. LEONHART

Arlington, Virginia

Wednesday, April 9, 2014

10:23 a.m.

Job No.: 56489

Pages: 1 - 185

Reported by: Lee Bursten, RMR, CRR



DEPOSITION OF MICHELE M. LEONHART - REDACTED  
CONDUCTED ON WEDNESDAY, APRIL 9, 2014

117

1           A       There's a -- part of the SAPP is the  
2       assessment center, and those exercises, and they  
3       change from time to time, those exercises often have  
4       enforcement experiences. And the role play that you  
5       do when you're a candidate is as if you were a group  
6       supervisor or as if you were an ASAC.

7           Q       So --

8           A       A field group supervisor, a field ASAC.

9           Q       So it does to some degree take into account  
10      enforcement experience?

11          A       The assessment itself is about the things  
12      that a 14 and 15 do in the field. And that all  
13      centers around enforcement, leading these enforcement  
14      groups. So it's enforcement-centric.

15                   (Leonhart Exhibit 7 was marked for  
16      identification and attached to the deposition  
17      transcript.)

18      BY MR. MAHR:

19          Q       What's been marked as Leonhart Exhibit 7  
20      appears to be a memorandum dated October 24th from  
21      Catherine Kasch -- to Catherine Kasch from Bryan M.  
22      Dougherty. And the subject is stated as, "List of

DEPOSITION OF MICHELE M. LEONHART - REDACTED  
CONDUCTED ON WEDNESDAY, APRIL 9, 2014

124

1 the best qualified list that's identified here again.  
2 Focusing on the time period when you were Deputy  
3 Administrator, 2003 to 2007, can you tell me why the  
4 DEA maintained a best qualified list?

5 A Because the agency had agreed to a process  
6 by which interested candidates could raise their  
7 hand, submit a package to be rated by a panel of SES,  
8 and then those names forwarded to the Administrator  
9 for consideration for any SES current vacancies or  
10 vacancies in the future.

11 Q And you said "by agreement." Agreement  
12 with whom?

13 A I believe it was an agreement between the  
14 agency and the working group related to the Segar  
15 litigation.

16 Q Am I right from what you said before that  
17 there are three categories of qualified lists; best  
18 qualified, qualified, and minimally qualified?

19 A Yes, there's three lists, depending on what  
20 that initial rating was.

21 Q And again sticking with the 2003-2007  
22 period, what in your view was the difference between

DEPOSITION OF MICHELE M. LEONHART - REDACTED  
CONDUCTED ON WEDNESDAY, APRIL 9, 2014

125

1 candidates on the best qualified list and the  
2 qualified list, in your view?

3 A In my view, it could have been just a  
4 point. I wasn't involved in the scoring, so I can't  
5 tell you -- and we don't know the scores of the  
6 employees. But it was anything above this score will  
7 go on this list, anything below will go on this one,  
8 anything below will go on this one.

9 Q And I recognize that one of the differences  
10 among the people on the lists is the score they got.  
11 My question is, you personally, did you view a  
12 substantive difference in candidates based on which  
13 lists they were placed on?

14 A I viewed that the process was for the  
15 Administrator to look at the three lists and look at  
16 the best qualified list, consider those candidates,  
17 look at the qualified list, look at those candidates,  
18 and look at and consider the minimally qualified.  
19 The idea was she would look at the candidates that  
20 raised their hand for SES and to see what list  
21 they're on.

22 Q Did she ever express to you her views as to

## **DEX C**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division  
-----x  
EDWARD L. GILMORE, :  
Plaintiff, :  
v. : Civil Action No.  
ERIC HOLDER, in his official : 1:13-cv-789  
capacity as Attorney General : (LO/IDD)  
of the United States, :  
Defendant. :  
-----x

CONFIDENTIAL ATTORNEYS' EYES ONLY PORTIONS REDACTED  
Deposition of MARK JOSEPH MAZZEI  
Washington, DC  
Friday, March 7, 2014  
10:00 a.m.

Job No.: 54460  
Pages: 1 - 168  
Reported by: Rebecca Stonestreet, RPR, CRR

1           A       I do know, but not because of my position as  
2 executive secretary of the Career Board. But yes.

3           Q       Okay. How did they do that?

4           A       They set a band based on what's called a SAPP  
5 score, a special agent promotion program score, and that  
6 band would determine who was best qualified.

7           Q       Okay. Were any other factors considered  
8 besides the SAPP score?

9           A       I don't know.

10          Q       And what specifically -- what do you mean by a  
11 band?

12          A       So each Grade 13 or Grade 14 -- and again, I'm  
13 only talking about special agents.

14          Q       Right.

15          A       Each Grade 13 or Grade 14 special agent who  
16 qualifies for promotion and wishes to be promoted  
17 receives a SAPP score, goes through the assessment and  
18 receives a SAPP score. Agent assignment would compile  
19 all the applicants for a particular position and  
20 determine what the highest score was among the  
21 applicants, and then the band would be set based on the  
22 highest score.

1           So for Grade 14 positions, it's 10 points  
2           within that high score; for Grade 15 positions, it's  
3           11 points; and any applicant who had a score within that  
4           band made the best-qualified list.

5           Q       Okay. Then what do you do when you receive  
6           the best-qualified list?

7           A       Compile biographical data that the Career  
8           Board held at that time for each special agent, send the  
9           BQL and the biographical information to the office head  
10          where the vacancy existed with instructions that he or  
11          she had to consider everybody on the BQL, and had the  
12          opportunity to make recommendations.

13          Q       Okay. What types of biographical data did you  
14          put together?

15          A       This -- and by the way, to clarify again, I'm  
16          talking about six years ago and I'm sure it's changed --  
17          I'm guessing it's changed.

18          Q       Right.

19          A       So there was at that time a database where  
20          special agents were afforded the opportunity to present  
21          information to the Career Board, and the Career Board  
22          would use that information to populate the database. And

1 best-qualified list. Correct?

2 A If it's a 15 position, yes, correct.

3 Q So the SAPP score only relates to a GS-13 or  
4 GS-14 seeking a promotion to the next step up. Correct?

5 A Correct.

6 Q Mr. Mazzei, you were a GS-14 prior to becoming  
7 the executive secretary. Correct?

8 A Correct.

9 Q And what level position is the executive  
10 secretary?

11 A 15.

12 Q In your experience, is it common that the  
13 executive secretary position is a promotion for GS-14s?

14 A I don't have a full breadth of institutional  
15 knowledge. But of late, certainly, yeah, it is common  
16 for it to be filled by a 14 being promoted.

17 Q And Mr. Mazzei, what involvement at all did  
18 you have in the selection of your successor as executive  
19 secretary?

20 A None whatsoever.

21 Q Mr. Mazzei, you earlier testified that you  
22 recalled a discussion about Mr. Gilmore requesting a



## **DEX D**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

EDWARD L. GILMORE,	.	Civil Action No. 1:13cv789
	.	
Plaintiff,	.	
	.	
vs.	.	Alexandria, Virginia
	.	May 16, 2014
ERIC HOLDER, in his official	.	10:14 a.m.
capacity as Attorney General	.	
of the United States,	.	
	.	
Defendant.	.	
	.	
. . . . .	.	

TRANSCRIPT OF MOTIONS HEARING  
BEFORE THE HONORABLE LEONIE M. BRINKEMA  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:	AMANDA L. MAJOR, ESQ.
	AMY P. KAPLAN, ESQ.
	Wilmer Cutler Pickering Hale and
	Dorr LLP
	1875 Pennsylvania Avenue, N.W.
	Washington, D.C. 20006

FOR THE DEFENDANT:	R. JOSEPH SHER, AUSA
	AYANA N. FREE, AUSA
	United States Attorney's Office
	2100 Jamieson Avenue
	Alexandria, VA 22314

OFFICIAL COURT REPORTER:	ANNELIESE J. THOMSON, RDR, CRR
	U.S. District Court, Fifth Floor
	401 Courthouse Square
	Alexandria, VA 22314
	(703)299-8595

(Pages 1 - 21)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 until they had -- they waited to piggyback their rebuttal  
2 expert report as a response to our supplement.

3 Now, I think it's important to look at exactly what  
4 our supplement was and what the response was when talking, when  
5 explaining why this is a little bit disingenuous. All our  
6 response was, all our supplemental report was was a two-page  
7 report. All I did was take new SES salary information, plug it  
8 into our existing methodology, and then from that calculate a  
9 different range of damages. It used existing methodology that  
10 we had laid out in our plaintiff's initial report.

11 In response to that supplement, the government  
12 responded to our initial expert report. As they said  
13 previously, they objected to using Barbara Roach's salary as a  
14 basis for damages. That was something that we said in our  
15 initial report, and they had the opportunity to respond to that  
16 by March 10. Again, they chose not to do so. They decided  
17 instead to file a rebuttal expert report late, and to allow it  
18 at this very late stage is extremely prejudicial.

19 THE COURT: Well, what I'm going to do, it's  
20 prejudicial only if you can't adjust for it. The trial doesn't  
21 start until June 16. There's sufficient time that if you want  
22 to take a deposition of their expert, I'm going to permit that.

23 MS. KAPLAN: Right, but --

24 THE COURT: That's the sanction that I'll impose if  
25 that's, if that's necessary. But again, I want to make it -- I

1 want to be clear because there's been this low number and this  
2 high number and so much data in this case, I would like each  
3 side to tell me right now what they think is the most  
4 reasonable damage number if Mr. Gilmore were to be successful.  
5 What is your view based upon the evidence and your expert's  
6 report?

7 MS. KAPLAN: Your Honor, our, our expert report, I  
8 think that our expert report is very clear, is that what we're  
9 looking at is the, you know, simply the anticipated damages in  
10 this case, and from that we're subtracting his actual damages.  
11 We use a periodic method --

12 THE COURT: You're not answering my question. Give  
13 me a number. What is the number that you think is the proper  
14 number here?

15 MS. KAPLAN: My apologies, Your Honor. I would have  
16 to probably --

17 MS. MAJOR: One minute, Your Honor.

18 THE COURT: And, Mr. Sher, you're going to get the  
19 same question from the Court.

20 MS. KAPLAN: My apologies, Your Honor.

21 MS. MAJOR: Your Honor, if I may address --

22 THE COURT: Well, I normally have one attorney per  
23 issue, so you decide who's going to be the person who's going  
24 to talk about damages, and then that person is it for the whole  
25 discussion.

1 Well, Mr. Sher, have you found yours?

2 MR. SHER: If I might have a moment, Your Honor,  
3 according to Mr. Lesch, based on the information available to  
4 him, that had Mr. Gilmore been promoted and remained for the  
5 remainder of his career --

6 THE COURT: Which was about four more years.

7 MR. SHER: Which --

8 THE COURT: Right? He had to retire at --

9 MR. SHER: Which is at issue.

10 THE COURT: He had to retire at 57. Isn't that  
11 mandatory?

12 MR. SHER: He had to retire at 57.

13 THE COURT: Right.

14 MR. SHER: Whether he would have retired in March of  
15 '08, when he had the opportunity that he took to become chief  
16 of police in his home city, that's an entirely different  
17 question.

18 THE COURT: Right.

19 MR. SHER: No matter what position he had at DEA.

20 THE COURT: Right now for sake of argument, let's  
21 assume that he had worked in the SES position until mandatory  
22 retirement at 57. That's certainly one of the scenarios upon  
23 which the plaintiff bases their damages.

24 MR. SHER: It is, it is. And Mr. Lesch estimates  
25 that to have been \$118,000.

1           THE COURT: And that as I understand it takes into  
2 consideration the salary differential, that is, the extra  
3 salary he would have received, and then the impact that that  
4 extra earnings for four years would have had on his federal  
5 retirement over the number of years that the actuarial tables  
6 would say he would be expected to have lived.

7           MR. SHER: Right. And subtracted from that is the  
8 income that -- the pension that he did receive, which it turns  
9 out was greater than what he would have received had he retired  
10 four years later as an SES --

11           THE COURT: All right. Well, I think I understand  
12 that statement, but let me make sure that I articulate it. So  
13 what happened is when he did retire, he got a lump sum payment  
14 or a payment. No, actually what did he get? He got 150,000,  
15 right?

16           MR. SHER: When he retired, he drew a pension.

17           THE COURT: When you say he drew a pension, he  
18 started collecting a monthly pension?

19           MR. SHER: He started collecting a monthly pension.

20           THE COURT: All right.

21           MR. SHER: For a period of time, that monthly pension  
22 was greater than it otherwise would have been because there's  
23 a -- because as a law enforcement officer under the Federal  
24 Employees Retirement System, he gets an additional amount  
25 because he doesn't qualify for Social Security for a period

1 because law enforcement retirement ages are too low to qualify  
2 for Social Security, so there is built into that system a  
3 greater payment for the first period of time until the Social  
4 Security element kicks in.

5 When you total up everything that he actually  
6 received and would have received for the remainder of his  
7 actuarial lifetime, the pension that he has received and will  
8 receive is larger than the pension that he would have received  
9 had he retired as a senior executive at mandatory retirement.

10 THE COURT: So the view of the defense, I want to  
11 make sure I understand, is that he actually is entitled to zero  
12 damages, that there's been no loss; is that right?

13 MR. SHER: No.

14 THE COURT: All right.

15 MR. SHER: That's not correct.

16 THE COURT: All right.

17 MR. SHER: What is correct is that when you add --  
18 when you look at what he would have received as a pension, it's  
19 less than what he actually will receive, so that difference has  
20 to be, because it's the same payer, has to be subtracted from  
21 the total damages.

22 THE COURT: All right.

23 MR. SHER: And the result of that --

24 THE COURT: Is the 118,000.

25 MR. SHER: -- is the 118.

1 THE COURT: All right, now let me hear the  
2 plaintiff's position.

3 MS. KAPLAN: Your Honor, my apologies for not being  
4 prepared with these numbers earlier.

5 THE COURT: All right.

6 MS. KAPLAN: The plaintiff's position is that as seen  
7 in our supplemental report, the current -- our report shows  
8 that our range of damages is about 150,000 to 200,000. Now, we  
9 actually by looking -- having the benefit now of Mr. Lesch's  
10 report, expert report, we now see that we actually  
11 underestimated Mr. Gilmore's salary, SES salary during that  
12 time, so the numbers might actually be higher at that point.  
13 This takes into consideration both, both the back pay and --  
14 lost back pay and future pay and then prejudgment interest.

15 I'd also like to note that we'll be seeking emotional  
16 damages, which we're not able to quantify at this time.

17 THE COURT: I think it's very difficult for a police  
18 officer and a chief of police to show emotional damages unless,  
19 you know, he was consulting with mental health people and  
20 taking medication and that sort of thing, so I think that's  
21 potentially a stretch.

22 How do you address the suggestion by the government  
23 that Agent Gilmore was actually looking for other positions? I  
24 mean, this Chicago chief of police position, is there evidence  
25 in this record that he had been making overtures to them or